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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,155	11/09/2001	Peter Frisk	027650-937	7579

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EXAMINER	
PATTERSON, MARC A	

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/890,155	FRISK ET AL.	
	Examiner	Art Unit	
	Marc A Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 November 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542), of record on page 2 of the previous Action, is repeated.

The 35 U.S.C. 103(a) rejection of Claim 5 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and further in view of Ikenoya et al (U.S. Patent No. 5,732,825) of record on page 3 of the previous Action, is repeated.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and 35 U.S.C. 103(a) rejection of Claim 5 as being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and further in view of Ikenoya et al (U.S. Patent No. 5,732,825), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant also argues, on page 6 of Paper No. 9, that Gillespie et al teaches away from the claimed average density of 0.900 g/ml – 0.915 g/ml and instead describes an annealed density of 0.925 – 0.927 g/cc.

However, although, Gillespie et al disclose an annealed density of 0.925g/cc to 0.927 g/cc, Gillespie et al also disclose a density of less than 0.92 g/ml (column 1, lines 53 – 63), which does not teach away from a density of 0.900 g/ml – 0.915 g/ml.

Applicant also argues on page 6 that Gillespie et al teaches that polyethylene with a density much below 0.92g/ml tends to exhibit high coefficients of friction which cause processing problems during carton conversions.

However, the claimed density of 0.915 g/ml is clearly not much below 0.92g/ml.

Applicant also argues, on page 7, that Gillespie et al teach that a melt flow index above 4 is undesirable because it prevents polyethylene from being extrusion coatable.

However, Gillespie et al actually teach that a melt flow index that is much above 4 dg/min is undesirable (column 2, lines 60 – 67). Furthermore, the claimed melt flow index of 5 dg/min is clearly not much above 4 dg/min in the absence of unexpected results.

Applicant also argues, on page 8, that Gillespie et al teach that a swelling ratio above 1.3 is undesirable because it does not permit polyethylene to be extrusion coatable.

However, Gillespie et al actually teach that a swelling ratio that is much above 1.3 is undesirable (column 3, lines 1 – 8). Furthermore, the claimed swelling ratio of 1.45 – 1.55 is clearly not much above a swelling ratio of 1.3 in the absence of unexpected results.

Applicant also argues, on page 10, that Ikenoya et al fail to disclose a strip tape having a sealing surface containing polyethylene.

However, as stated on page 7 of the previous Action, Ikenoya et al teach the use of a strip tape to cover a section of the innermost layer of a container (column 5, lines 35 – 40; Figure 2) for the purpose of making a container which prevents leakage of liquid food (column 5, lines 45

– 50). The desirability of providing for a strip tape to cover a section of the innermost layer of Gillespie et al, which is a container, would therefore have been obvious to one ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a strip tape covering a section of the innermost layer in Gillespie et al in order to make a container which prevents leakage of liquid food as taught by Ikenoya et al.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497.

The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.
Art Unit 1772

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/8/04